



P O Box 3952
Charleston WV 25339-3952

(304) 345-9246
www.acluww.org

March 19, 2020

Commissioner Betsy Jividen
Sent via email to betsy.jividen@wv.gov

Re: Request for COVID-19 Plans

Commissioner Jividen,

I am writing to follow up on the March 10, 2020 letter I sent requesting copies of any plans ODCR has in place to protect incarcerated individuals in the facilities under the Division's Control from COVID-19. That includes, but is not limited to, plans relating to protecting the health of the incarcerated as well as any policies surrounding visitation restrictions and communication via phone, email, etc.

To date, I have not received an acknowledgment of receipt of the letter, responsive documents, or a denial.

West Virginia Code Section 29B-1-3 requires agencies to respond to requests for public records within **five business days**. Please provide the responsive documents by **12 p.m. March 20, 2020**, or our organization will move forward to institute proceedings under Section 29B-1-3 for injunctive or declaratory relief in circuit court.

West Virginia's Freedom of Information Act is "liberally construed with the view of carrying out" a policy of disclosure, while exemptions are to be narrowly construed. W. Va. Code §29B-1-1. Any party claiming that an exemption applies bears the burden of proving its applicability. *See Daily Gazette v. W. Va. Dev. Office*, 482 S.E.2d 180, 187 (W. Va. 1996). Documents regarding policies of public agencies after the policies have been formulated are not subject to the "internal memoranda or letters" exemption to the WV-FOIA provisions. *See id.* at 192. Finally, for any undisclosed or redacted records, we request a *Vaughn* index.

Thank you in advance for your prompt response. Please furnish all records to lstark@acluwv.org. You can reach me on my cell at 914-393-4614 with any questions.

Regards,

A handwritten signature in blue ink, appearing to read "Loree Stark".

Loree Stark
Legal Director, ACLU-WV